

## **IC 33-8-2**

### **Chapter 2. St. Joseph Probate Court**

## **IC 33-8-2-1**

### **Creation and establishment of court**

Sec. 1. There is hereby created and established a probate court in the county of St. Joseph to be known as the St. Joseph Probate Court, to be presided over by one judge to be chosen as herein provided.  
(Formerly: Acts 1945, c.333, s.1.)

## **IC 33-8-2-2**

### **Court of record; seal**

Sec. 2. Such court shall be a court of record, and shall have a seal and device, as the judge thereof may choose, and the name of the county on the face thereof; and a description and impression thereof shall be spread on the order-book of the court.  
(Formerly: Acts 1945, c.333, s.2.)

## **IC 33-8-2-3**

### **Judge; election; vacancies; appointment**

Sec. 3. (a) The court shall consist of one (1) judge, to be elected by the legal voters of said county for the term of six (6) years, beginning on the first day of January following his election, and until his successor shall be elected and qualified. The election shall be had at the time of the general election every six (6) years. Said judge shall be commissioned by the governor in the same manner as judges of the circuit court; and all vacancies occurring in the office of judge of such probate court shall be filled by appointment by the governor, in the same manner as vacancies in the office of judge of the circuit court.

(b) To be eligible to hold office as a judge of the court, a person must be a resident of St. Joseph County.  
(Formerly: Acts 1945, c.333, s.3.) As amended by Acts 1976, P.L.133, SEC.34; P.L.26-1999, SEC.3.

## **IC 33-8-2-4**

### **Clerk and sheriff; designation; fees**

Sec. 4. The clerk of the circuit court and the sheriff of the county where such court is organized shall be respectively the clerk and sheriff of said court; and for their services they shall each be entitled to such fees as are or may be allowed in the circuit court for like services.  
(Formerly: Acts 1945, c.333, s.4.)

## **IC 33-8-2-5**

### **Clerk and sheriff; duties and liability; application of laws**

Sec. 5. The clerk and sheriff shall attend said court and discharge all the duties pertaining to their respective offices as they are now or may hereafter be required to do, by law, in the circuit court; and all laws now in force, or which may be enacted, prescribing the duties

and liability of such officers, and the mode of proceeding against them, or either of them for any neglect of official duty, allowing fees and providing for the collection thereof, in the circuit court, shall be held and deemed to extend to said probate court, as far as they apply.  
*(Formerly: Acts 1945, c.333, s.5.)*

#### **IC 33-8-2-6**

##### **Sessions of court**

Sec. 6. The said probate court shall hold its sessions at the courthouse of the county, or at such other convenient place as court shall designate in such county, and the county commissioners shall provide suitable quarters therefor.  
*(Formerly: Acts 1945, c.333, s.6.)*

#### **IC 33-8-2-7**

##### **Adjournment of court**

Sec. 7. The judge of said court may adjourn the same on any day previous to the expiration of the time for which it may be held, and also from any one day in the term over to any other day in the same term, if in his opinion the business of the court will admit thereof.  
*(Formerly: Acts 1945, c.333, s.8.)*

#### **IC 33-8-2-8**

##### **Trial extending beyond term of court**

Sec. 8. Whenever a trial is begun and in progress at the time when by law, the term of such court would expire, the term shall be extended until the close of such trial.  
*(Formerly: Acts 1945, c.333, s.9.)*

#### **IC 33-8-2-9**

##### **Jurisdiction of court**

Sec. 9. The probate court within and for the county for which it is organized has original, concurrent jurisdiction with the superior courts of the county in all matters pertaining to the probate of wills, proceedings to resist probate of wills, proceedings to contest wills, the appointment of guardians, assignees, executors, administrators, and trustees, the administration and settlement of estates of protected persons (as defined in IC 29-3-1-13) and deceased persons, the administration of trusts, assignments, adoption proceedings and surviving partnerships, and in all other probate matters. The probate court shall not have and exercise jurisdiction in civil actions.  
*(Formerly: Acts 1945, c.333, s.10; Acts 1959, c.260, s.1.) As amended by Acts 1981, P.L.272, SEC.89; P.L.33-1989, SEC.114.*

#### **IC 33-8-2-10**

##### **Juvenile jurisdiction**

Sec. 10. The probate court has exclusive juvenile jurisdiction in St. Joseph County.  
*(Formerly: Acts 1945, c.333, s.11.) As amended by Acts 1978, P.L.136, SEC.53.*

**IC 33-8-2-11****Probate and juvenile causes transferred from circuit court; return of process**

Sec. 11. Upon the organization of said probate court, all probate and juvenile causes pending in the circuit court of such county shall be transferred to such probate court. And all warrants, subpoenas, rules, orders of court, and other process which may have issued from the circuit court of such county, in such probate causes, shall be returnable to the probate court upon the first day of the first term thereof to be holden; and said probate court shall have jurisdiction thereof, and proceed therein; and all proceedings in probate and juvenile causes in said court shall be conducted as proceedings are or may be required, by law, to be conducted in the circuit court in the counties having no probate court.

*(Formerly: Acts 1945, c.333, s.12.)*

**IC 33-8-2-12****Judge acting as circuit court or superior court judge**

Sec. 12. Any judge of said probate court shall be competent to act as judge of any circuit court or superior court upon the trial of any cause or proceeding, when the judge of said circuit or superior court may be incompetent to try the cause; or a change of venue be granted for objection to the judge thereof.

*(Formerly: Acts 1945, c.333, s.14.)*

**IC 33-8-2-13****Appointment of temporary judge**

Sec. 13. If, from any cause any judge of said probate court shall be unable to attend and preside at any term of said court, or during any part of a term, such judge may appoint, in writing any attorney eligible to the office of such judge, at such term or part of a term. Such written appointment shall be entered of record in said court, and if the appointee is not a judge of a court of record he shall take the same oath required by law of judges of the probate court, and such appointee shall have the same power and authority during the continuance of his appointment as a regularly elected judge of said court.

*(Formerly: Acts 1945, c.333, s.15.)*

**IC 33-8-2-14****Compensation of judge pro tem**

Sec. 14. Whenever any person shall be appointed judge pro tem under the provisions of this chapter he shall be entitled to ten dollars (\$10.00) for each day he may serve as such judge, to be paid out of the county treasury, where such probate court is held, upon the warrant of the county auditor, based upon the filing of a claim therefor approved by the judge of said court. Any amount in excess of five hundred dollars (\$500) allowed to any judge pro tem, during any year shall be deducted by the board of county commissioners from the regular annual salary of the judge of such probate court,

making the appointment, except where such judge pro tem shall be appointed on account of change of venue, relationship, interest as former counsel, or absence of judge in case of serious sickness of himself or family.

*(Formerly: Acts 1945, c.333, s.16.) As amended by Acts 1981, P.L.272, SEC.90.*

#### **IC 33-8-2-15**

##### **Process of court**

Sec. 15. The process of said court shall have the seal affixed, and be attested, directed, served and returned, and be in form as is or may be provided for process issuing from the circuit court.

*(Formerly: Acts 1945, c.333, s.17.)*

#### **IC 33-8-2-16**

##### **Court of record; force and effect of judgment, orders, and proceedings**

Sec. 16. Said court shall be a court of record and of general jurisdiction, and its judgments, decrees, orders and proceedings shall have the same force and effect as those of the circuit court and shall be enforced in the same manner.

*(Formerly: Acts 1945, c.333, s.18.)*

#### **IC 33-8-2-17**

##### **Power and authority of judge**

Sec. 17. The judge of said court shall have full power and authority to make and adopt rules and regulations for conducting the business of the court, not repugnant to the laws of this state, and shall have all the power incident to a court of record and of general original jurisdiction, in relation to the attendance of witnesses, the punishment of contempts, and enforcing its orders. And the judges of said court shall each have full authority to administer oaths, take and certify acknowledgments of deeds, and give all necessary certificates for the authentication of the records and proceedings in said court.

*(Formerly: Acts 1945, c.333, s.19.)*

#### **IC 33-8-2-18**

##### **Dockets; books and records**

Sec. 18. The clerk shall, under the direction of the judge, provide for such court order-books, judgment dockets, execution dockets, fee-books, and such other books, records and supplies as may be necessary; and all books, papers and proceedings of said court shall be kept distinct and separate from those of other courts.

*(Formerly: Acts 1945, c.333, s.20.)*

#### **IC 33-8-2-19**

##### **Power of judge same as circuit court**

Sec. 19. The judge of said court shall have the same power as the circuit court of said county in term or in vacation, to grant restraining

orders, injunctions, and writs of ne exeat; to issue writs of habeas corpus, and of mandate and prohibition; to appoint receivers, master commissioners for the examination of witnesses, and other officers necessary to facilitate and transact the business of such court.

*(Formerly: Acts 1945, c.333, s.21.)*

#### **IC 33-8-2-20**

##### **Appeals**

Sec. 20. Any party may appeal to the supreme court or the court of appeals from the order or judgment of the court in any case in which, under existing or future laws of this state, an appeal may be had from an order or judgment of the circuit court. The appeal shall be regulated by the law regulating appeals from the circuit court to the court of appeals and the supreme court, so far as applicable. An appeal may also be taken to the court of appeals and the supreme court in the same manner and in like cases as from circuit courts.

*(Formerly: Acts 1945, c.333, s.22.) As amended by P.L.3-1989, SEC.200.*

#### **IC 33-8-2-21**

##### **Docket fees**

Sec. 21. The same docket fees shall be taxed in the said court as are now or may be provided by law to be taxed in the circuit court and the said fees, when collected, shall be paid by the clerk to the treasurer of the county to be applied in reimbursing the county for expenses of said court.

*(Formerly: Acts 1945, c.333, s.23.)*

#### **IC 33-8-2-22**

##### **Salary of judge**

Sec. 22. (a) The salary of the judge of such probate court shall be the same as that of the judge of the circuit court of such county, and the salary of such judge and the compensation of a judge pro tempore shall be paid in the same manner respectively and from the same sources as the judge of said circuit court or judges pro tempore of said court.

(b) A full-time judge of a probate court may not be paid compensation for serving as a special judge, except reasonable expenses for meals, lodging, travel, and other incidental expenses approved by the state court administrator.

*(Formerly: Acts 1945, c.333, s.24.) As amended by P.L.279-1995, SEC.4; P.L.280-1995, SEC.4.*

#### **IC 33-8-2-23**

##### **Chief clerk and other employees**

Sec. 23. Said probate court may appoint a chief clerk and such other employees as he deems necessary whose salaries shall be fixed by said judge and be paid out of the county treasury.

*(Formerly: Acts 1945, c.333, s.25.)*

**IC 33-8-2-24****Probation officers**

Sec. 24. Said probate judge shall appoint such probation officers as are authorized by law to be appointed by the judge having juvenile jurisdiction, which probation officers shall perform the same duties and receive the same compensation as is by law provided.

*(Formerly: Acts 1945, c.333, s.26.)*

**IC 33-8-2-25****Appointment of magistrate; term**

Sec. 25. In addition to any appointments made by the judge of the St. Joseph probate court under IC 31-31-3, the judge of the St. Joseph probate court may appoint one (1) full-time magistrate under IC 33-4-7. The magistrate may exercise:

(1) probate jurisdiction under IC 33-8-2-9; and

(2) juvenile jurisdiction under IC 33-8-2-10;

and continues in office until removed by the judge.

*As added by P.L.18-1995, SEC.103. Amended by P.L.1-1997, SEC.126.*